IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 18855 of 2002

Date of decision: 22.2.2007

Er Inderjit Singh Bajwa …Petitioner

Versus

State of Punjab and ors …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr Sanjeev Thakur, Advocate for
Mr Sanjeev Bansal, Advocate, for the petitioner.
Mrs Charu Tuli, Sr DAG Punjab, for respondent-1.
Mr HS Sran, Advocate, for respondent-2.
Mrs Daya Chaudhary, Addl Solicitor General, Union of India for Respondent-3.

S.S. SARON, J.

The previous service rendered by the petitioner in MES department for the period from May 1965 to September 1970 has not been counted towards qualifying service for pensionary benefits. The petitioner, therefore, by way of the present petition seeks quashing of the orders dated 6.10.1998 (Annexure P13) and 22.10.2002 (Annexure P16) whereby the aforesaid benefit of past service rendered by him has not been counted as qualifying service towards pensionary benefits by the Punjab State Electricity Board (Board – for short) (respondent-2). The petitioner also seeks a direction for counting the aforesaid service period of past service rendered by him in the MES department towards pensionary benefits in accordance with the instructions and judgment of this Court in the case of ***Er Satwant Singh Sandhu v. State of Punjab*** (CWP 6134 of 2000)

decided on 23.8.2001 (Annexure P11). Besides, to calculate his pensionary benefits after adding the period of service rendered by him under the Chief Engineer, Chandigarh Zone, MES, Chandimandir (respondent-3).

The petitioner was appointed as temporary Superintendent/B&R Grade – I under the Chief Engineer, North-Western Zone, Western Command, Shimla (now at Chandimandir) in May 1965. During his service with the MES department, he submitted an application through proper channel for the post of Assistant Engineer (Civil) that had been advertised by the Board. The application was forwarded to the Secretary of the Board by the MES authorities. The petitioner was selected as Assistant Engineer (Civil) in the Board. As such, he tendered his resignation to the MES department so as to join the service of the Board. His resignation was accepted and he was relieved by the MES department on 30.9.1970 so as to enable him to join the Board. He joined the service of the Board on 1.10.1970 and thereafter was confirmed as Assistant Engineer (Civil) on 1.3.1991. On attaining the age of superannuation, he retired from the post of Assistant Superintending Engineer from the Board. The grievance of the petitioner is that the period of service rendered by him with the MES prior to joining the service of the Board has not been taken into account and that the same is liable to be counted towards qualifying service for the grant of pensionary benefits.

Reply in the case has been filed by the Board (respondent-2) as also by the MES authorities i.e. respondent-3.

Respondent-2, in its reply has submitted that the MES under the North-Western Zone, Western Command, never gave any information to

the Board in respect of the service rendered by the petitioner with it. The service book containing the service particulars of the petitioner were not forwarded by the MES authorities nor submitted by the petitioner with the Board. It is, however, submitted that the Board is always ready to help persons like the petitioner provided the previous departments served by persons like the petitioner share the proportionate liability. It is submitted that in almost all cases, there has not been any cooperation by the previous departments in which the employee has rendered service. It is further stated that the instructions (Annexure P5) are not applicable to the respondent Board as those have not been adopted by it. Besides, instructions issued by the Board vide letter dated 28.11.1990 have been withdrawn vide office order dated 25.11.1993 (Annexure R2/1). It is also submitted that the respondent-Board had demanded a sum of Rs 1,35,286/- from the MES department on account of pension liability for the service rendered by Shri Satwant Singh Sandhu, who was the petitioner in CWP 6134 of 2000, on whose case the petitioner places reliance. However, the MES department deposited only Rs 1140/- as pension liability against the amount worked out by the respondent-Board. It is submitted that the Board has no objection for paying the retrial benefits to the petitioner provided the MES authorities (respondent-3) certify the service rendered by the petitioner with them and pays the pension and other funds as calculated by the Board towards retrial benefits. The respondent-Board has also filed an additional affidavit dated 17.2.2007 of Shri GS Ghuman, Joint Secretary, Services-I, of the Board. It is submitted that in view of the various instructions issued by the Ministry of Home Affairs and the Punjab Government, the past service of the petitioner could be counted for pensionary benefits if

respondent-3 makes the proportionate payment of pensionary benefits to the Board.

In the reply filed by respondent-3, it is stated that it has been unnecessarily impleaded as a respondent as no relief has been sought against it. It is, however, accepted that the petitioner was working as Superintendent (B&R) Grade-I on temporary basis under the Chief Engineer (North-West Zone), Western Command, Shimla. He submitted an application for the post of Assistant Engineer (Civil) advertised by the Board. His application was forwarded by the Chief Engineer vide letter dated 2.2.1970. It is submitted that the petitioner has not enclosed the copy of his resignation letter, which is a material document for ascertaining his eligibility for the contribution of pro-rata pension by the Central Government in case the Board accepts or is directed by this Court to count the previous service of the petitioner under the Central Govt towards pensionable service under the Board. The petitioner has not enclosed a copy of his relieving letter showing that he had taken up the assignment with the Board with proper permission, in accordance with the instructions (Annexure R1). It is further submitted that in terms of para 3 of the instructions (Annexure P5) it has been observed by the Central Govt that where Central Govt employees are absorbed in State Govt autonomous bodies, their cases for grant of pro-rata pension benefits for the duration of service under the Central Govt would be decided in accordance with the principle as laid down in OM No.28-10/84 dated 29.8.1984 (Annexure R1) which has been issued by the department of Personnel and Administrative Reforms. It is submitted that in terms of the said OM, it has been provided that various departments of the Central Govt may accept the pension

liability in all such cases where the Central Govt employees moved to autonomous bodies with proper permission and were discharged in the prescribed manner. It has also been clarified vide instructions dated 12.9.1985 that for the purposes of grant of pro-rata pension by the Central Govt; "proper permission" means that the government servant has applied for the post in autonomous body through "proper channel" and he resigns with due intimation that he is doing so to take up assignment in an autonomous body or the government servant is relieved of his duties by the government department/office to take up the assignment in an autonomous body. In any case, it is submitted that if this Court directs the Board to grant the benefit of addition of previous service of the petitioner under the Central Govt for the purposes of pensionary liability, it would examine the case in the light of the instructions OM No.28-10/84-Pension Unit, dated 29.8.1984 (Annexure R1).

Learned counsel for the petitioner submits that the petitioner is entitled to count his past service rendered in the MES towards qualifying service for the grant of retrial benefits in accordance with the various instructions issued by the respondents as also in the light of the judgment passed by this Court in Satwant Singh's case (supra) against which SLP (Civil) No.1406/2002 has been dismissed on 4.2.2002 (Annexure P12).

In response, learned counsel for the Board (respondent-2) submits that the petitioner is not entitled for the counting of past service rendered by him with the MES authorities. In any case, it is submitted that the Central Govt authorities are not cooperating and if respondent-3 makes proportionate payment on pro rata basis of the liability as determined on account of past service rendered by the petitioner, the necessary payments

would be released. Learned counsel for the respondent-Board during the course of hearing has placed on record the calculation of pensionary liability for the period of service rendered by the petitioner with the MES. The same is taken on record as Mark-A. In terms of the statement, the pension liability in respect of the petitioner has been worked out.

Learned counsel appearing for respondent-3 submits that the reliance placed on the judgment of Er Satwant Singh Sandhu's case (supra) is not tenable as the said judgment was based on the basis of concession given by the counsel for the Central Govt. In any case, it is not disputed that it has been observed by the Central Govt that where the Central Govt employees have been absorbed in the State Govt autonomous bodies, their cases for the grant of pro-rata pension benefits for the duration of service under the Central Govt are to be decided in accordance with the principles as laid down in OM dated 29.8.1984 (Annexure R1).

We have given our thoughtful consideration to the matter.

It is not in dispute that the petitioner was working as Superintendent, B&R Grade-I on temporary basis under the Chief Engineer (North-West Zone), Western Command, Shimla. During his service, he applied for the post of Assistant Engineer (Civil) advertised by the Board. It is also not in dispute that on his request, his application along with connected documents for consideration of his case for appointment as Assistant Engineer (Civil) with the Board was forwarded by the Chief Engineer vide letter dated 2.2.1970 (Annexure P1). The petitioner, therefore, has admittedly rendered service with the MES department prior to his joining the service of the Board. He tendered his resignation before the respondent-3 authorities and was relieved by them on 30.9.1970. He joined

the service, of the Board on 1.10.1970 and thereafter was confirmed as Assistant Engineer (Civil) on 1.3.1991. The claim of the petitioner is for the counting of period of service rendered by him with the MES authorities towards pensionary benefits. The instructions in this regard dated 20.5.1982 have been issued by the Punjab Govt. These have been adopted by the Board vide memo dated 25.11.1985 (Annexure R2/2). It has inter alia been provided by the instructions dated 20.5.1982 as follows:-

> "I am directed to refer to the subject noted above and to say that the Govt of Punjab have been considering in consultation with the Govt of India the question of sharing on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees, who had rendered temporary service under the Central Govt/State Govt on their own securing posts under the State/Central Govt on their own volition in response to advertisements or circulars, including those by the State/Union Public Service Commission, and who are eventually confirmed in their new posts. It has since been decided in consultation with the Govt of India that proportionate pensionary liability in respect of temporary service rendered under the Central Govt/State Govt to the extent such service would have qualified for grant of pension under the rules of respective Govt will be shared by the Govt concerned on a service-share basis so that the Govt employees are allowed the benefit of counting their qualifying service both under the Central Govt and the State Govt for grant of pension by the Govt from where they eventually retired. The

> gratuity, if any, received by the Govt employee for temporary service under the Central or State Govt will, however, have to be refunded by him to the Govt concerned."

It has further been provided that the benefit would be admissible to those who while holding temporary posts under the Central/State government applied for the post under State/Central government through proper channel with permission of the administrative authorities concerned. Besides, the benefit would be allowed in such cases also where an employee is required for administrative reasons for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment and a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. It is on the said instructions that the claim of Er Satwant Singh Sandhu who was petitioner in CWP 6134 of 2000 decided on 25.8.2001 (Annexure P11) was allowed by this Court and SLP (Civil) No.1406 of 2002 was dismissed by the Supreme Court on 4.2.2002 (Annexure P12). In fact, in the written statement filed by respondent-2, the only constraint felt by the Board is that there has been no cooperation by the MES authorities to share the pension liability. Respondent-3, in its written statement, has in fact not disputed the position that where Central Govt employees have been absorbed in the State Govt autonomous bodies, their cases for the grant of pro-rata pension benefits for the duration of service under the Central Govt would be decided in accordance with the principles as laid down in OM dated 29.8.2981

(Annexure P1). The relevant para 3 of the OM dated 29.8.1984 reads as under:-

"**Transfer of Central Government servants to Central Autonomous Bodies and vice versa and of employees Of Central Autonomous Body to another Central Autonomous Body**

[Government of India, Dept. of Personnel & A.R., O.M.No.28-10/84-Pension Unit, dated the 29th Aug,1984]

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xxxx xxxx

3. This matter has been considered carefully and the President has now been pleased to decide that the cases of Central Government employees going over to a Central autonomous body or vice versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-

(a) In case of Autonomous bodies where Pension Scheme is in operation –

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a

temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the autonomous body/Government, as the case may be. Lump sum amount of the pro rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time."

In view of the above, it is apparent that the case of the petitioner is not being attended to only because the liability that is to be shared by the Central Govt and the Board is not being finalized. The Board is avoiding its liability as respondent-3 is not sharing its proportionate liability of pension in respect of the petitioner. It is submitted by the Board that it is always ready to help such persons provided the proportionate liability is shared by the previous departments. Respondent-3 is avoiding its liability as the copy of the resignation letter of the petitioner has not been submitted which, according to it, is a material document for ascertaining the eligibility of the petitioner for the contribution of pro-rata pension by the Central Govt in case the Board accepts or is directed by this Court to count

the previous service of the petitioner under the Central Govt towards pensionable service in the Board. Therefore, evidently it is a case where the buck is being passed by the Board to the Central Govt and the Central Govt to the Board. The factual position, however, is not in dispute that the petitioner indeed has rendered service with the MES authorities and that he applied for the appointment as Assistant Engineer (Civil) in the Board through proper channel and his application was forwarded by the Chief Engineer vide letter dated 2.2.1970 (Annexure P1). In terms of the OM dated 29.8.1984 (Annexure R1), even the temporary service rendered by the petitioner with the MES authorities is to be counted towards pension in case the temporary service is followed by confirmation. It is not in dispute that the petitioner was confirmed as Assistant Engineer (Civil) in the Board on 1.3.1991. The petitioner, on his selection as Assistant Engineer (Civil) in the Board, tendered his resignation to the MES authorities to join the service of the Board. The tendering of such resignation in terms of the instructions dated 20.5.1982, it has been provided that the benefit be allowed in such cases also where an employee is required for administrative reasons for satisfying a technical requirement to tender resignation from the temporary post held by him before joining the new department. Therefore, there is no reason to deny the benefit of service rendered by the petitioner from May 1965 to 30.9.1970 as qualifying service of pensionary benefits and the respondent-3 sharing by contributing pro-rata pension as determined in accordance with OM dated 29.8.1984 (Annexure R1).

The liability that is due and payable by respondent-3 (MES authorities) has been worked out by the Board and has been placed on record as Mark-A, a copy of which has been given to the learned counsel

for respondent-3. Therefore, the respondent-3 is to examine the same and make its pro-rata share by making contribution in the pension that is payable.

In view of the foregoing discussion, this petition is disposed of with the direction to respondent-3 to examine the calculations of pensionary liability of the petitioner for the period from May 1965 to 30.9.1970 as determined by the Board in terms of Mark-A by treating the same as qualifying service in addition to the pensionable service rendered by the petitioner with the Board and consequently, the revised pensionary benefits due to the petitioner on the basis of re-calculations done be released to him. The necessary exercise be carried out and completed preferably within three months of the receipt of a certified copy of this order.

The writ petition is disposed of accordingly.

(S.S.NIJJAR)
JUDGE

22.2.2007. (S.S.SARON)
ASR JUDGE

WHETHER FIT FOR INDEXING : YES/NO